

SOAH DOCKET NO. 582-07-2673
TCEQ DOCKET NO. 2007-0204-WDW

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| APPLICATION OF TEXCOM GULF | § | BEFORE THE STATE OFFICE |
| DISPOSAL, L.L.C. FOR TEXAS | § | |
| COMMISSION ON ENVIRONMENTAL | § | OF |
| QUALITY UNDERGROUND INJECTION | § | |
| CONTROL PERMIT NOS. WDW410, | § | |
| WDW411, WDW412, and WDW413 | § | ADMINISTRATIVE HEARINGS |

SOAH DOCKET NO. 582-07-2674
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| APPLICATION OF TEXCOM GULF | § | BEFORE THE STATE OFFICE |
| DISPOSAL, L.L.C. FOR TEXAS | § | |
| COMMISSION ON ENVIRONMENTAL | § | OF |
| QUALITY INDUSTRIAL SOLID WASTE | § | |
| PERMIT NO. 87758 | § | ADMINISTRATIVE HEARINGS |

PRE-FILED TESTIMONY OF

KAREN G. BAKER, P.E.

ON BEHALF OF ALIGNED PROTESTANTS

MONTGOMERY COUNTY AND CITY OF CONROE

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1 **I. BACKGROUND**

2 Q. PLEASE STATE YOUR NAME.

3 A. Karen Baker.

4 Q. HOW ARE YOU PRESENTLY EMPLOYED?

5 A. I am employed by the Texas Department of Transportation, also known as
6 TXDOT, as the area engineer with the responsibility of Montgomery County.

7 Q. HOW LONG HAVE YOU BEEN AN ENGINEER WITH THE TEXAS
8 DEPARTMENT OF TRANSPORTATION?

9 A. I began my employment as an engineer or engineer in training with TXDOT in
10 July 1983, so 26 and a half years.

11 Q. HOW LONG HAVE YOU BEEN THE AREA ENGINEER FOR TXDOT FOR
12 MONTGOMERY COUNTY?

13 A. Eleven years.

14 Q. IS YOUR OFFICE IN CONROE?

15 A. Yes.

16 Q. PLEASE TELL US ABOUT YOUR EDUCATIONAL BACKGROUND.

17 A. I have a degree in microbiology from Texas A&M University in College Station.
18 I also have a degree in civil engineering from Texas A&M University in College
19 Station. Both of them are Bachelor of Science degrees.

20 Q. MS. BAKER, AS THE AREA ENGINEER FOR TXDOT FOR THE
21 MONTGOMERY COUNTY AREA, CAN YOU BRIEFLY TELL US WHAT
22 YOUR DUTIES INVOLVE IN THAT CAPACITY?

1 A. I am responsible for the design, construction, and maintenance of the state
2 roadways in Montgomery County, the day-to-day operations of TxDOT in
3 Montgomery County.

4 Q. DO YOU HAVE ANY SUPERVISORY RESPONSIBILITIES OUTSIDE OF
5 MONTGOMERY COUNTY IN THAT RESPECT OR IN THAT REGARD?

6 A. No.

7 Q. SO YOUR SUPERVISORY RESPONSIBILITIES AND YOUR WORK WITH
8 TXDOT AT THE PRESENT TIME IS AS THE AREA ENGINEER FOCUSING
9 ON MONTGOMERY COUNTY, TEXAS?

10 A. Yes.

11 Q. WHAT TYPES OF ROADWAYS FALL UNDER YOUR SUPERVISION AS
12 THE AREA ENGINEER FOR TXDOT?

13 A. Basically, if it is an interstate or state roadway, that falls under my jurisdiction.
14 That would be interstates such as Interstate 45, U.S. 59, State Highway -- you
15 know, any state highway where it has the S.H. designation, also Farm-to-Market
16 roads.

17 Q. ARE YOU FAMILIAR WITH FARM-TO-MARKET ROAD 3083 IN
18 MONTGOMERY COUNTY?

19 A. Yes.

20 Q. ARE YOU FAMILIAR, MS. BAKER, WITH GENERALLY THE
21 INTERSECTION OF FM 3083 AND ANOTHER ROADWAY CALLED
22 JEFFERSON CHEMICAL ROAD?

23 A. Yes.

1 Q. WHERE WOULD YOU SAY THAT INTERSECTION IS IN RELATION TO
2 CONROE?

3 A. Southeast of Conroe.

4 Q. IS THAT INTERSECTION INSIDE OR OUTSIDE THE CITY OF CONROE
5 CITY LIMITS?

6 A. That intersection is outside the city limits.

7 **II. TXDOT ACCESS MANAGEMENT**

8 Q. AS PART OF ITS DUTIES, DOES TXDOT MANAGE ACCESS TO
9 STATE ROADWAYS, FOR EXAMPLE, BY DRIVEWAYS?

10 A. Yes.

11 Q. DOES TXDOT HAVE A WRITTEN POLICY WITH REGARD TO ACCESS
12 MANAGEMENT?

13 A. Yes. The Texas Department of Transportation currently has an access
14 management manual which sets forth our policies and regulations. The current
15 manual and policy was originally adopted in January 2004 and was most recently
16 amended in December 2009.

17 Q. I AM SHOWING YOU WHAT HAS BEEN MARKED AS ALIGNED
18 PROTESTANTS REMAND HEARING EXHIBIT 2. CAN YOU IDENTIFY IT
19 FOR THE COURT?

20 A. This is the "Texas Department of Transportation Access Management Manual."

21 Q. IS THAT THE LATEST AMENDED EDITION OF THAT DOCUMENT?

22 A. Yes, it is the latest amended edition. It was last amended in December 2009.

1 Q. WHERE MIGHT A MEMBER OF THE PUBLIC OBTAIN A COPY OF
2 TXDOT'S ACCESS MANAGEMENT MANUAL?

3 A. It is available online from the TxDOT website.

4 Q. IS THIS A TRUE AND CORRECT COPY OF THE "TEXAS DEPARTMENT
5 OF TRANSPORTATION ACCESS MANAGEMENT MANUAL,"
6 DECEMBER 2009 EDITION?

7 A. Yes.

8 **ALIGNED PROTESTANTS OFFER ALIGNED PROTESTANTS REMAND**
9 **EXHIBIT 2, TEXAS DEPARTMENT OF TRANSPORTATION ACCESS**
10 **MANAGEMENT MANUAL, DECEMBER 2009 EDITION.**

11 Q. IS THE ACCESS MANAGEMENT MANUAL SOMETHING THAT YOU USE
12 WITH ANY KIND OF FREQUENCY?

13 A. Yes.

14 Q. HOW DO YOU USE IT?

15 A. When we receive requests for access, we refer to this particular manual to help
16 provide guidance.

17 Q. IS THE ACCESS MANAGEMENT PLAN OR POLICY RELEVANT TO SAFE
18 DESIGN AND MAINTENANCE OF THE STATE HIGHWAY SYSTEM?

19 A. Yes.

20 Q. PLEASE DESCRIBE WHAT SPECIFICALLY TXDOT MEANS BY THE
21 TERM "ACCESS MANAGEMENT."

22 A. Access management determines the spacing between access points along a
23 roadway, in our particular case state roadways, whether it be between driveways

1 or between a street and a driveway; and the distance between these access points
2 is determined primarily by the speed limit.

3 Q. WHAT IS THE PURPOSE OF THE TEXAS DEPARTMENT OF
4 TRANSPORTATION ACCESS MANAGEMENT MANUAL AND
5 REGULATIONS?

6 A. The purpose of access management is to ensure a smooth flow of traffic on state
7 roadways while providing the safest possible access to roadways. To achieve
8 these goals, TxDOT sets forth criteria for distances between access points in the
9 access management policy, based on stopping sight distance formulated from
10 years of engineering studies and, these studies show that if you can limit the
11 number of access points to a particular roadway, the likelihood of accidents will
12 be less.

13 Q. ARE THERE OTHER ROADWAYS MAINTAINED BY COUNTIES AND/OR
14 MUNICIPALITIES THAT INTERSECT WITH STATE MAINTAINED
15 ROADWAYS?

16 A. Yes.

17 Q. ARE THERE FROM TIME TO TIME DRIVEWAYS THAT ARE ALLOWED
18 TO DIRECTLY CONNECT PRIVATE PROPERTY TO A STATE
19 HIGHWAY?

20 A. Yes.

21 Q. ARE THERE FROM TIME TO TIME DRIVEWAYS THAT ARE ALLOWED
22 TO CONNECT PRIVATE PROPERTY TO A FARM-TO-MARKET ROAD?

23 A. Yes.

1 Q. ARE ALL OF THOSE CONNECTIONS BETWEEN COUNTY AND
2 MUNICIPALLY MAINTAINED ROADWAYS AND STATE HIGHWAYS
3 AND THE DRIVEWAYS AND STATE HIGHWAYS SUBJECT TO THE
4 TXDOT ACCESS MANAGEMENT PLAN?

5 A. Yes, as those driveways impact the state roadway.

6 Q. WHAT IS TXDOT'S FUNCTION WITH RESPECT TO THE STATE
7 HIGHWAY SYSTEM?

8 A. TxDOT is responsible for design, construction, and maintenance of the state
9 roadways.

10 Q. IN THAT DESIGN, CONSTRUCTION, AND MAINTENANCE, IS THE
11 SAFETY OF THE TRAVELING PUBLIC AN ISSUE THAT YOU
12 CONSIDER?

13 A. Yes.

14 Q. WHAT DOES PROPER ACCESS MANAGEMENT PROVIDE?

15 A. It preserves the roadway efficiency and enhances traffic safety. It reduces traffic,
16 accidents, injuries, and property damage.

17 Q. ARE THE POLICIES AND REGULATIONS CONTAINED IN THE ACCESS
18 MANAGEMENT MANUAL APPLIED THROUGHOUT THE STATE OF
19 TEXAS?

20 A. Yes.

21 Q. ARE THOSE POLICES AND REGULATIONS CONTAINED IN THAT
22 MANUAL APPLIED IN MONTGOMERY COUNTY, TEXAS?

23 A. Yes.

1 Q. MS. BAKER, ARE YOU FAMILIAR WITH THE POTENTIAL FOR A
2 MUNICIPALITY TO REQUEST AUTHORITY TO HAVE A LOCAL ACCESS
3 MANAGEMENT AUTHORITY?

4 A. Yes.

5 Q. WHAT WOULD IT MEAN FOR A MUNICIPALITY TO HAVE LOCAL
6 ACCESS MANAGEMENT AUTHORITY?

7 A. A local municipality would have their own access management policies and
8 procedures, for the purposes of allowing access on state roadways within their
9 jurisdiction. Their plan would be submitted to TxDOT which would have to
10 approve it.

11 Q. HAS ANY MUNICIPALITY IN MONTGOMERY COUNTY MADE SUCH A
12 REQUEST TO TXDOT FOR ANY ROADWAYS, ANY STATE ROADWAYS
13 IN MONTGOMERY COUNTY?

14 A. No.

15 Q. SPECIFICALLY, DOES THE CITY OF CONROE HAVE ACCESS
16 MANAGEMENT AUTHORITY OVER STATE ROADWAYS WITHIN ITS
17 CITY LIMITS?

18 A. No.

19 Q. SO, AS IT STANDS TODAY, ACCESS MANAGEMENT FOR THE STATE
20 HIGHWAY SYSTEM IN MONTGOMERY COUNTY IS MANAGED BY
21 WHAT OFFICE?

22 A. It is by the office that handles Montgomery County, which is my office.

1 Q. IS IT TXDOT'S POLICY, THAT THE RESOLUTION OF ACCESS ISSUES TO
2 BE COMPLETED AT THE LOCAL LEVEL?

3 A. Yes.

4 Q. WHEN I SAY "LOCAL," MEANING AN OFFICE LIKE YOURS?

5 A. Yes.

6 **III. TEXCOM'S ACCESS TO FM 3083**

7 Q. LET'S RETURN TO THE INTERSECTION OF FM 3083 AND JEFFERSON
8 CHEMICAL ROAD, WHICH YOU HAVE ALREADY TESTIFIED YOU ARE
9 FAMILIAR WITH. ARE YOU FAMILIAR WITH AN AREA OF LAND
10 NORTHWEST OF THE INTERSECTION OF JEFFERSON CHEMICAL
11 ROAD AND FM 3083?

12 A. Yes.

13 Q. ARE YOU FAMILIAR WITH A COUNTY-MAINTAINED ROADWAY
14 CALLED CREIGHTON ROAD?

15 A. Yes.

16 Q. ARE YOU FAMILIAR WITH WHERE CREIGHTON ROAD INTERSECTS
17 WITH ANOTHER COUNTY-MAINTAINED ROADWAY CALLED ALBERT
18 MOOREHEAD ROAD?

19 A. Yes.

20 Q. AND DO YOU KNOW WHETHER OR NOT ALBERT MOOREHEAD ROAD
21 INTERSECTS WITH FM 3083?

22 A. Yes, Albert Moorehead Road does intersect with FM 3083.

1 Q. IF YOU PROCEED NORTH FROM THAT INTERSECTION, HAVING
2 ENCOUNTERED FM 3083 ON ALBERT MOOREHEAD ROAD, WHAT
3 DOES THE ROAD BECOME?

4 A. Jefferson Chemical Road.

5 Q. IS THAT UNUSUAL THAT A ROAD NAME CHANGES ONCE IT
6 CROSSES AN INTERSECTION?

7 A. No.

8 Q. SO IF WE REFER TO JEFFERSON CHEMICAL ROAD AND ITS
9 INTERSECTION WITH 3083, IS IT FAIR TO SAY THAT'S THE SAME
10 INTERSECTION AS ALBERT MOOREHEAD ROAD AND 3083?

11 A. Yes.

12 Q. MS. BAKER, DID YOU AT SOME TIME RECEIVE A REQUEST FROM THE
13 MONTGOMERY COUNTY ENGINEER'S OFFICE CONCERNING
14 PROPERTY IN THE VICINITY OF THAT INTERSECTION?

15 A. Yes.

16 Q. WHO DID YOU RECEIVE THAT REQUEST FROM?

17 A. I received a letter from Dan Wilds.

18 Q. WHO IS HE?

19 A. He is an engineer in the Montgomery County Engineer's office.

20 Q. GENERALLY, MS. BAKER, CAN YOU TELL US WHAT WAS THE
21 NATURE OF MR. WILDS' REQUEST?

22 A. He inquired about a potential driveway location on FM 3083 and wanted to know
23 if that driveway would impact FM 3083.

1 Q. DID MR. WILDS PROVIDE YOU WITH ANY IDENTIFYING
2 INFORMATION ON THE POTENTIAL DRIVEWAY?

3 A. Yes.

4 Q. WHAT DID HE PROVIDE YOU WITH?

5 A. He attached to his letter two maps.

6 Q. I AM SHOWING YOU WHAT HAS BEEN MARKED AS ALIGNED
7 PROTESTANTS REMAND EXHIBITS 3 AND 4. COULD YOU PLEASE
8 IDENTIFY THESE DOCUMENTS?

9 A. Those are the maps attached to Mr. Wilds' letter.

10 **ALIGNED PROTESTANTS OFFER ALIGNED PROTESTANTS REMAND**
11 **EXHIBITS 3 AND 4. THESE HAVE BEEN PREVIOUSLY ADMITTED AS**
12 **TEXCOM EXH. 6, P. 201 OF 314 AND P. 198 OF 314.**

13 Q. DID THOSE TWO EXHIBITS ASSIST YOU IN EVALUATING THE
14 POTENTIAL DRIVEWAY THAT MR. WILDS WAS INQUIRING ABOUT?

15 A. Yes.

16 Q. MS. BAKER, DID YOU ACCESS ANY OTHER INFORMATION TO ASSIST
17 YOU IN IDENTIFYING THE PROPERTY OR EVALUATING THE
18 POTENTIAL DRIVEWAY THAT MR. WILDS WAS INQUIRING ABOUT?

19 A. Yes.

20 Q. WHAT OTHER INFORMATION DID YOU UTILIZE?

21 A. Aerial photographs.

22 Q. AND LOOKING AT EXHIBIT NO. 3, DOES THERE APPEAR TO BE, FOR
23 WANT OF A BETTER PHRASE, A SMALL FINGER OF REAL ESTATE

1 THAT FRONTS ON FM 3083 APPARENTLY BELONGING TO TEXCOM
2 GULF DISPOSAL, L.L.C.?

3 A. Yes.

4 Q. DO YOU KNOW, MS. BAKER, THE LENGTH OF FRONTAGE ON FM 3083
5 THAT BELONGS TO TEXCOM?

6 A. Yes.

7 Q. WHAT IS THAT LENGTH OF FRONTAGE?

8 A. 72 feet.

9 Q. MS. BAKER, HAVE YOU HAD AN OPPORTUNITY TO STUDY THE
10 ROADWAY, FM 3083, FROM THE VICINITY OF THE APPARENT
11 FRONTAGE BELONGING TO TEXCOM DOWN TO THE INTERSECTION
12 OF FM 3083 AND JEFFERSON CHEMICAL ROAD?

13 A. Yes.

14 Q. ARE YOU FAMILIAR WITH THAT LENGTH OF ROADWAY?

15 A. Yes.

16 Q. IS THAT A LENGTH OF ROADWAY UNDER YOUR SUPERVISION AS
17 THE AREA ENGINEER FOR TXDOT?

18 A. Yes.

19 Q. WOULD ANY IMPROVEMENTS TO THAT ROADWAY OF ANY KIND BE
20 SUBJECT TO YOUR SUPERVISION AND AUTHORITY?

21 A. Yes.

22 Q. ARE THERE ANY EXISTING DRIVEWAYS GRANTING ACCESS TO
23 PRIVATE PROPERTY BETWEEN THE APPARENT FRONTAGE OF

1 PROPERTY OWNED BY TEXCOM GULF DISPOSAL AND THE
2 INTERSECTION AT JEFFERSON CHEMICAL ROAD?

3 A. Yes.

4 Q. APPROXIMATELY, IF YOU KNOW, HOW MANY DRIVEWAYS
5 CURRENTLY EXIST ALONG THAT STRETCH OF ROAD, FROM THE
6 APPARENT TEXCOM FRONTAGE TO THE INTERSECTION AT
7 JEFFERSON CHEMICAL ROAD, INCLUDING BOTH SIDES OF THE
8 ROADWAY?

9 A. Approximately a dozen.

10 Q. DO YOU KNOW THE DISTANCE BETWEEN THE TEXCOM PROPERTY
11 ON FM 3083 AND THE INTERSECTION OF JEFFERSON CHEMICAL AND
12 FM 3083?

13 A. Approximately 1400 feet.

14 Q. MS. BAKER, DO YOU KNOW THE CURRENT POSTED SPEED LIMIT FOR
15 THAT SECTION OF FM 3083?

16 A. Yes.

17 Q. WHAT IS THAT SPEED LIMIT?

18 A. 55 miles an hour.

19 Q. IS THERE A PARTICULAR DISTANCE BETWEEN DRIVEWAYS
20 DICTATED BY THE ACCESS MANAGEMENT MANUAL THAT WOULD
21 BE APPLICABLE TO THIS ROADWAY WITH A SPEED LIMIT OF 55
22 MILES PER HOUR?

23 A. Yes.

1 Q. AND WHAT IS THAT DISTANCE BETWEEN DRIVEWAYS THAT IS
2 DICTATED BY THE MANUAL?

3 A. 425 feet.

4 Q. MS. BAKER, IF A CURRENT OR FUTURE REQUEST TO CREATE AN
5 ADDITIONAL DRIVEWAY TO ACCESS PROPERTY ALONG THIS
6 SECTION OF FM 3083 THAT WE'RE TALKING ABOUT WAS SUBMITTED
7 TO TXDOT, WOULD THAT REQUEST BE SOMETHING THAT WOULD
8 PASS UNDER YOUR REVIEW AND AUTHORITY?

9 A. Yes.

10 Q. IF A FORMAL REQUEST WAS MADE BY SOME LANDOWNER ALONG
11 THIS SECTION OF ROAD FOR DRIVEWAY ACCESS, WOULD THAT
12 REQUEST REQUIRE YOUR REVIEW OF TXDOT'S ACCESS
13 MANAGEMENT POLICY?

14 A. Yes.

15 Q. MS. BAKER, HAVE YOU EVALUATED WHETHER OR NOT A NEW
16 DRIVEWAY ACCESS ON TEXCOM'S FRONTAGE ON FM 3083 WOULD
17 BE IN COMPLIANCE WITH THE TXDOT ACCESS MANAGEMENT
18 POLICY?

19 A. Yes.

20 Q. ARE THERE SOME EXISTING DRIVEWAYS ALONG THIS SECTION OF
21 3083 THAT ARE, IN FACT, CLOSER TOGETHER?

22 A. Yes.

1 Q. WHY ARE THEY ALLOWED TO BE CLOSER TOGETHER IN VIEW OF
2 THE ACCESS MANAGEMENT MANUAL POLICY AND REGULATIONS?

3 A. Those driveways were in existence prior to the adoption of our current Access
4 Management Manual and policy with regard to driveway spacing. Therefore, they
5 are grandfathered in under the previous policy.

6 Q. HAVE YOU LOOKED AT THE DISTANCE BETWEEN TEXCOM'S
7 APPARENT FRONTAGE AND ADJACENT DRIVEWAYS?

8 A. Yes.

9 Q. WHAT IS THE DISTANCE THAT YOU HAVE FOUND CURRENTLY
10 EXISTS BETWEEN EXISTING DRIVEWAYS THAT ARE ADJACENT TO
11 TEXCOM'S FRONTAGE?

12 A. The distance between existing driveways on either side of TexCom's frontage is
13 approximately 280 feet and TexCom's frontage property falls in between those
14 driveways.

15 Q. UNDER THE ACCESS MANAGEMENT POLICY AND REGULATIONS
16 APPLICABLE TO NEW ACCESS PROPOSALS, IS A SPACING OF 280 FEET
17 WITHIN THE PERMISSIBLE DISTANCE UNDER THE CURRENT POLICY
18 AND REGULATIONS?

19 A. At 55 miles an hour, no.

20 Q. GIVEN THE EXISTENCE OF OTHER DRIVEWAYS AND THE CURRENT
21 POSTED SPEED LIMIT FOR FM 3083, WOULD THE LOCATION OF A
22 DRIVEWAY ANYWHERE ALONG TEXCOM'S APPARENT FRONTAGE

1 ON FM 3083 MEET THE TEXAS DEPARTMENT OF TRANSPORTATION'S
2 ACCESS MANAGEMENT CRITERIA?

3 A. No.

4 Q. IS THERE A PARTICULAR SPEED LIMIT THAT TRIGGERS THE 425
5 FOOT DISTANCE REQUIREMENT FOR DRIVEWAYS?

6 A. Yes, 50 miles per hour or greater.

7 Q. WOULD THAT BE THE CASE FOR ALL OF THE STATE-MAINTAINED
8 ROADWAYS IN MONTGOMERY COUNTY?

9 A. Yes.

10 Q. SO THIS IS NOT UNIQUE TO FM 3083?

11 A. No.

12 Q. DOES THE SPACING REQUIREMENT OF 425 FEET BETWEEN ACCESS
13 POINTS ON THIS PARTICULAR TYPE OF HIGHWAY DUE TO ITS SPEED
14 LIMIT OF 55 ASSUME A PARTICULAR TYPE OF VEHICULAR TRAFFIC?

15 A. Yes.

16 Q. WHAT TYPE WOULD THAT BE?

17 A. That would be passenger vehicles on a flat grade.

18 Q. IF THE ACCESS POINT OR DRIVEWAY THAT WAS REQUESTED WAS
19 ONE THAT WOULD ALLOW ACCESS FOR A RELATIVELY HIGH
20 VOLUME OF INDUSTRIAL TRUCK TRAFFIC, WOULD THAT
21 POTENTIALLY CHANGE THE DISTANCE FIGURE BETWEEN ACCESS
22 POINTS?

23 A. Yes.

1 A. Yes.

2 Q. Thank you, Ms. Baker.